REMARKS

In an Office Action dated September 1, 2005, the Examiner objected to claim 4 because it was "a substantial duplicate of claim 3". (It was in fact identical to claim 3 for which Applicants' attorney apologizes.) (The original intention was that claim 4 be dependent from claim 2 in contrast to claim 3 which was dependent from claim 1. However, this error is moot since Applicants are canceling both claims 3 and 4.)

The Examiner rejected claim 5 under 35 U.S.C. 112, second paragraph, as being indefinite. Applicants are amending claim 5 to recite "wherein said means for dynamically altering" instead of "dynamically adjusting". This should overcome the grounds for the Examiner's rejection under 35 U.S.C. 112.

The Examiner rejected claims 1 and 9 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,188,697 (Umehira); rejected claims 2 and 8 under 35 U.S.C. 103(a) as being unpatentable over Umehira in view of Patent Document 2004/0071216 (Richardson); and rejected claims 3-7 under 35 U.S.C. 103(a) as being unpatentable over Umehira in view of U.S. Patent 6,690,678 (Basso).

Responsive to the grounds for these rejections, Applicants are amending claim 1 to include the restrictions formerly recited in claim 4 (now canceled) as well as the restriction formerly recited in claim 6 (now being canceled). Applicants are also canceling claims 3 and 7.

As amended, claim 1 now recites not only that a limited amount of Constant Bit Rate (CBR) data is transmitted with an additional amount of Variable Bit Rate (VBR) data in a frame, but that the limit on the amount of CBR data that is combined into each frame is dynamically altered and is adjusted in response to the amount of CBR data waiting to be transmitted. The subject matter to support this last clause is recited on page 8, lines 5-10, which state:

> The strategy for adjusting this limit can be based on the specific traffic demands of the various devices attached to the xTU-R, in which case it can be adjusted up or down as each device requests a greater or lesser CBR input rate; or it can be adjusted dynamically as the amount of CBR data in queue 322 varies, so that the amount of CBR data is never too high (indicating too low a limit) or that the CBR queue is nearly empty or empty (indicating that the limit is too high).
> [Emphasis added]

While Basso does indicate that the amount of CBR is dynamically adjusted based on current network resources, he does not indicate that the system measures the amount of CBR traffic waiting to be transmitted and adjusting the limit on the number of CBR packets to be transmitted based on this measurement. Advantageously, Applicants' arrangement allows for a rapid response to changes in the amount of CBR traffic to allow more CBR traffic to be transmitted if the CBR traffic is starting to be backed up or to allow more VBR traffic to be transmitted if the CBR traffic decreases.

Accordingly, Applicants respectfully submit that the subject matter of claim 1 as amended is allowable over the cited prior art. Claims 2, 5, 8 and 9 should be held allowable as being dependent from claim 1.

Accordingly, Applicants respectfully request that the Examiner reconsider the grounds for rejection of the amended claims, hold that the subject matter of the amended claims is allowable, and that the application including claims 1, 2, 5, 8 and 9 as amended should be passed to issue.

If the Examiner feels that a telephone or fax contact would help to advance the prosecution of this application, the Examiner is invited to contact Applicants' attorney at 630 469-3575 to transmit a fax message or to speak with Applicants' attorney.

Respectfully submitted

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